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No.

Supreme Court, U.S.
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In the Supreme Court of the United States

October Term, 1986

ELIJAH W. RATCLIFF,
Petitioner

vs.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE OR FOR EXTENSION WITH PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. The trial Court abused its discretion in neglecting to address and grant the accused's Motion for Change of Venue supported by affiants who resided within the subject Southern District of Texas reflecting that the accused could not expect to obtain a fair trial therein (Doc. Nos. 2, 6 and 20).

II. The trial Court abused its discretion in refusing to disqualify himself where he was prejudicially preoccupied in favor of State Bar of Texas elements which could be discredited for nonfeasance by evidence sought for and essential to the accused's defense (Doc. Nos. 2, 6 and 20).

III. The Presiding Judge below abused his discretion in refusing the accused's Rules 12, 15 and 16 motion in limine and for dismissal seeking Internal Revenue Service records to establish the absence of an ongoing "proceeding" and that the subject governmental employees were engaged outside the "due administration of justice" pertinent to the indictment below (Doc. Nos. 1 and 8).

IV. The Granting of dilatory motions at the suggestion of the government resulting in an unreasonably long delay before the trial in spite of timely objections by the accused is violative of due process and the right to a speedy trial (Doc. Nos. 9, 10, 11, 12, 13, 14, 15 and 17).

V. The trial Court contravened the accused's right to compulsory process in declining enforcement of a subpoena duces tecum for Internal Revenue Service records to establish the absence of an ongoing "proceeding" and that the subject revenue officers were engaged outside "the due administration of justice" related to the indictment below (Doc. Nos. 1, 8 and 55).

VI. Counsel below engaged unconstitutional misconduct in striking a member of the petit jury array because she was a resident, educated adult of Negro ancestry (Tr. V. I, p. 58, l. 6-9, p. 63, l. 13, p. 64, l.8 and 24-25, p. 66, l. 15-25, and p. 67, l. 1-23).

VII. Counsel for the accused below engaged insidious misconduct detrimental to the accused by invoking the Rule precluding witnesses for the accused from reviewing the trial session prompting more absences for recall testimony (Tr. V. II, p. 20, l. 5-23, p. 21, l. 18 to p. 22, l. 5).

VIII. The trial Court erred in permitting government witnesses to give hearsay testimony that a proceeding was in progress regarding the charges herein where the government had declined to honor the accused's motion to discover the evidence upon which their hearsay testimony allegedly derived (Doc. Nos. 1 and 8; Tr. V. I, pp. 40-43, V. II, p. 15 to p. 19, l. 20).

IX. The Court below erred in admitting evidence in conjunction with certain antique guns owned by the accused's father and seized at the father's residence in Livingston, Texas as the accused held no vested interest in the antiques or the residence, and no conversation emanated from the accused with respect to Livingston, Texas (Doc. No. 1; Tr. V. I, p. 169, V. III, p. 7, l. 11 to p. 12, l. 25, pp. 14-15, p. 18, l. 6-13, pp. 90-94, p. 116 and pp. 134-135).

X. The United States District Court below and its officers fostered a conspiracy to harass, incriminate and convict the accused as a plenary view of the proceeding below reveals (Doc. Nos. 1, 2, 8 and 20).

No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

ELIJAH W. RATCLIFF,

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THE UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

To the Honorable William H. Rehnquist, Chief Justice, and the Justices of the Supreme Court of the United States.

GUIDE TO SPECIAL ABBREVIATIONS USED IN PETITION

Docket Item Number from the United States District Court	Doc. No.
Transcript from the Trial Court	Tr.
Volume of Transcript (I, II, III, IV or V)	V.
Line or lines of page (1, 2, 3...25)	1.
United States District Court Below	US DC SD TX or U.S.D.C.
United States Court of Appeals, Fifth Circuit	USCA, 5th Cir.
Plaintiff's Exhibit	P
Defendant's Exhibit	D

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OPINIONS BELOW

The review sought hereby is from a decision of the United States Court of Appeals for the Fifth Circuit, No. 86-2436, officially reported at 806 F.2d 1639 (5th Cir. 1987), a copy of which is appended hereto, erroneously affirming and neglecting to rectify a conspiracy to convict and incriminate Petitioner in the United States District Court for the Southern District of Texas, Houston Division, Cr. No. H-85-28, not reported, but a copy of which Judgment and related Indictment is appended hereto.

GROUNDS FOR SUPREME COURT JURISDICTION

The decision of the United States Court of Appeals, Fifth Circuit, was rendered and entered of December 17, 1986, and a Motion for Rehearing was denied on February 11, 1987. Review by the Supreme Court of the United States is sought pursuant to Title 28, United States Code, Section 1254, of the lower Courts' disregard for the Constitutional rights of the accused under United States Code, Const. Amend. I, V and XIV, Sec. 1, in conjunction with Title 42, United States Code, Sections 1981, 1982, 1983 and 1985.

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES INVOLVED

Constitutional provisions invoked by the proceedings below are United States Code, Const. Amend. I, V, VI and XIV. Statutory measures giving rise to the proceedings below upon which the Government relied are Title 18, United States Code, Section 1505, and Title 26, United States Code, Section 7212(a).

Internal Revenue laws upon which Petitioner relied preliminary to the bureaucratic and judicial misconduct engaged against him in the premises included Title 26, United States Code, Sections 1(c), 151(a), 162(a), 165(a), 167(a), 172(a) and 1374(a).

Errors in the proceedings below arise out of assertions by Petitioner based upon statutory authorizations of Title 28, United States Code, Sections 1343, 1443, 1447(d) and 1651(a) and Title 42, United States Code, Sections 1981, 1982, 1983 and 1985, in addition to reliance on Fed. Rules Civ. Proc. Rule 60(b), 28 U.S.C., and Fed. Rules Cr. Proc., Rules 15(a) and 16(a)(1)(A), and 21(a), 18 U.S.C., and which should protect and enable the First Amendment rights claimed by Petitioner free from fraudulent fabrications by parties acting under color of authority of the Internal Revenue laws.

The cited authorities are set forth verbatim in the Appendix hereto.

STATEMENT OF THE CASE

(i). Course of Proceedings and Disposition Below

Initial charges were filed against the accused on January 10, 1985, Magistrate's Case No. H-85-12M, in the United States District Court for the Southern District of Texas, Houston Division (Docket Sheet, p. 2) alleging threats against Joseph Hamilton who is employed by the Internal Revenue Service. A four-count Indictment evolved from the described charges as filed with the United States District Clerk of February 7, 1985 (Doc. No. 1).

A Motion for Change of Venue was duly submitted by the accused herein on February 12, 1985 (Doc. No. 2) which was never granted or formally heard, and which encountered the fate generally incurred by the accused's defense in the Courts below, including a disregard for the reiteration of his right to a speedy trial submitted in writing on March 13, 1985 (Doc. No. 17).

A trial or conclusion in the deliberations was interrupted via one maneuver after another by the United States District Court and its officers until March 19, 1986 when the subject trial, culminating the conspiracy to harass, incriminate and convict the accused, unfolded. Sentencing was enunciated on June 27, 1986, including revocation of the accused's bond, and this Appeal was perfected by a Notice of Appeal submitted on June 28, 1986 (Doc. No. 113).

(ii). Statement of Facts

Certain ancillaries of the Regional Office of the Internal Revenue Service, headquartered at Austin, Texas, were coaxed into targeting Petitioner and his business associates for harassment under the guise of Internal Revenue discovery and collections. (See subpoena duces tecum for IRS designate/Doc. Nos. 8 and 55; Tr. V. II, p.3, 1. 20-25; p. 4, 1. 14; p. 14, 1. 3-12.)

At the early stages, the irregularities were observed to affect only Texas business endeavors, so Petitioner, along with his associates, patrons and clients, limited their responses, petitions and complaints to litigation within the United States District Court for the Southern District of Texas. (See CA No. H-82-0620, US DC SD TX.) However, the realm of the pertinent irregularities expanded to include defamation and discredits disseminated in other States, so in addition to suing persons acting under color of authority of Respondent in the Southern District of Texas, an action was commenced in the United States District Court for the Southern District of New York, No. 83 CIV 6896 (M.E.L.) (P-3; Tr. V. II, p. 52, 1. 18-19; V. III, p. 119, 1. 19—p. 120, 1. 23). This development appeared to personally infuriate elements of the Austin, Texas Regional Office and the Houston, Texas District Office of the Internal Revenue Service such that they broadened their campaign from mere fabrication of civil liability against Petitioner and his business associates to the surreptitious and fraudulent manufacture of criminal charges against the accused.

The United States District Court below refused to cooperate with the accused's efforts to expose the relevant fraud and Governmental irregularities (Doc. 8 and 78; Tr. V. II, p. 4, 1. 1-14; p. 14, 1. 3-12). Thus, appellate procedures were invoked to attain rectification of the pertinent irregularities litigated in the United States District Court below (Doc. Nos. 113 and 114).

(iii). Basis for Federal Jurisdiction

United States Code, Const. Art. III, grants jurisdiction of the subject litigation to the Courts of the United States which the United States District Court below abused, and the United States Court of Appeals, Fifth Circuit, declined to reform as envisioned by Title 28, United States Code, Sections 1291 and 1651. Review by the United States Supreme Court relies on Title 28, United States Code, Sections 1254 and 1651. (See Notice of Appeal appended hereto.)

ARGUMENT

The subject prosecution below is insupportable with reference to the facts, law and procedures utilized by the United States District Court and its Officers to incite and rationalize the unconstitutional and improvident Indictment of the accused.

The allegations of a threat to "blow Hamilton to pieces" proposed by the Government were unlawfully fabricated as the jury found (Doc. No. 90, counts 1 and 2), and the charges that the accused threatened to harm Revenue Officer Joseph Hamilton were unfounded as a fair presentation of the facts and law to a jury without resort to libelous fabrications would produce (Doc. Nos. 8, 20 and 90). *United States v. Hylton*, 558 F. Supp. 872 (SD TX 1982), affirmed 710 F.2d 1106 (5th Cir. 1983).

I. The Trial Court Abused its Discretion in Neglecting To Address and Grant the Accused's Motion for Change of Venue Supported by Affiants Who Resided Within the Subject Southern District of Texas Reflecting That the Accused Could Not Expect To Obtain a Fair Trial Therein

Petitioner filed a Motion for Change of Venue on February 14, 1985 (Doc. No. 2) which was less than a week after the Indictment was filed herein on February 7, 1985 (Doc. Nos. 1 and 2).

Such accused was admitted to practive law in the Courts of Texas on September 17, 1962 via examination following graduation from the Texas Southern University School of Law on May

27, 1962. He was admitted to the Bar of the United States District Court for the Southern District of Texas in June of 1966, and appeared in an attorney capacity before such United States District Court repetitiously spanning proceedings before each member of such judiciary (D 1, 3; Tr. V. III, p. 118, l. 7—p. 120, l. 23). Fed. Rules Evid. Rule 201(d), 28 U.S.C.

Among Petitioner's principals before such judiciary were affiants Cleophus L. Kennedy of Houston, Texas and J. W. Ratcliff of Livingston, Texas, cross-section representatives of Petitioner's patrons and clients, whose statements under oath were submitted on February 19, 1985, for filing in conjunction with the described Motion for Change of Venue (Doc. No. 2) preliminary to the Request for Recusal, submitted on March 13, 1985 (Doc. No. 20).

The Motion was prescribed by Fed. Rules Cr. Proc., Rules 21(a) and 22, 18 U.S.C. No justification or findings were furnished by the Court below relating to the failure to grant the Motion, and such refusal contravened well-recognized precedents governing the exercise of discretion on venue issues. *United States v. Wheaton*, 463 F. Supp. 1073 (SD NY 1979), affirmed 614 F.2d 1293 (1979); *United States v. Roberts*, 618 F.2d 530 (9th Cir. 1980).

II. The Trial Court Abused Its Discretion in Refusing To Disqualify Himself Where He Was Prejudicially Preoccupied in Favor of State Bar of Texas Elements Which Could Be Discredited for Nonfeasance by Evidence Sought for and Essential to the Accused's Defense

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The files of the United States District Court below upon examination will reveal that the accused has engaged voluminous litigation against the State Bar of Texas arising out of its disregard for the fraud ultimately giving rise to a disbarment

order against him under date of February 28, 1974. (See Doc. Nos. 8, 55 and 78; also, Complaint No. 81-2, *Director of Practice v. Elijah W. Ratcliff*, U.S. Department of the Treasury/not on Docket as exhibited/.) Fed. Rules Evid. Rule 201(d), 28 U.S.C.

Petitioner attacked the voidable disbarment order on grounds of fraud, but the State Bar of Texas was successful in limiting the litigation's docket tenure so as to avoid effective discovery procedures, and, consequently, was able to compel each presiding judge who entertained Petitioner's petitions for reinstatement of his law license to refrain from considering fraud as grounds for rectification, contrary to the Executive branch of the State of Texas which granted Petitioner a full pardon following his application based upon the void and "fraudulently fabricated" nature of the underlying conviction (Tr. V. III, p. 110, l. 1-5; p. 111, l. 10-11; p. 114, l. 2-4). (See also Application for Full Pardon obtaining Proc. No. 83-11204 by the Governor of the State of Texas.) United States Code, Const. Amend. XIV; 46 Am. Jur. 2d Judgments §§380 and 642; Fed. Rules Civ. Proc., Rule 60(b), 28 U.S.C.

In a defensive posture, following initiation of the described petitions for reinstatement, elements of the State Bar of Texas initiated a campaign to discredit Petitioner as a professional and a jurist which routinely extended to local employees of the Internal Revenue Service, originally involving Employees who were, also, members of the State Bar of Texas, but dispersed to contaminate the reasoning processes of each Revenue Officer involved with the tax liability issues of Petitioner and his business associates, including but not limited to shareholders of Dunbar Resources-Livingston, Inc., and Lake Livingston Realty, Inc., Texas corporate entities.

The Presiding Judge below in Cr. No. H-85-28, Judge Carl O. Bue, Jr., was, also, Presiding Judge in the Civil Rights removal action, Cr. No. 71-H-228, US DC SD TX, where the

Court declined below to exercise its jurisdiction to remedy the subject void and fraudulent racially motivated State action against Petitioner in the District Court of Polk County, Texas, No. 9432, and the District Court of Montgomery County, Texas, No. 11,064. Therefore, the Presiding Judge was deemed to have a substantial personal and political interest to conceal or protect arising out of his described prior improvident adjudication juxtaposed against the Executive pardon and restoration of civil rights granted Petitioner (State of Texas, Executive Proc. No. 83-11204), in addition to matters cited and encompassed in the affidavits filed below. (See affidavits of February 19, 1985, not isolated among docket entries, Doc. No. 6.) Fed. Rules Evid. Rule 201(d), 28 U.S.C.; *Aetna Life and Casualty Insurance Co. v. Lavoie*, 106 S.Ct. 1580 (1986).

Thus, the accused filed his request for Recusal (Doc. No. 20) supplementing the merits of his Motion for Change of Venue (Doc. No. 6), and it should have been granted because the evidence clearly reflected a "substantial interest" on the part of the Presiding Judge to push the case to a conviction and conclusion adverse to Petitioner and his associates. Title 28, United States Code, Section 455; *Conley v. Gipson*, 355 U.S. 41 (1957); *Adams v. United States*, 302 F.2d 307 (5th Cir. 1962); *Aetna Life and Casualty Insurance Co. v. Lavoie*, 106 S.Ct. 1580 (1986).

Argument

III. The Presiding Judge Below Abused His Discretion in Refusing the Accused's Rules 12, 15 and 16 Motion in Limine and for Dismissal Seeking Internal Revenue Service Records To Establish the Absence of an Ongoing "Proceeding" and That the Subject Governmental Employees Were Engaged Outside the "Due Administration of Justice" Pertinent to the Indictment Below

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It was clearly violative of due process for the United States District Court to refuse Petitioner's Rules 12, 15 and 16 Motion in Limine and for Dismissal (Doc. No. 8) which requested, among other items, the records of the investigations, investigators, examiners, computations and all data giving rise to the conclusion in item 2 under Count One of the Indictment herein (Doc. No. 1). Such information was pertinent to whether a "proceeding" was ongoing within the contemplation of Title 18, United States Code, Section 1505, and Title 26, United States Code, Section 7212(a), and, if so, whether the conduct of the prosecuting witness, Joseph Hamilton, to whom the Indictment makes reference, at all times, or at any time relevant to such Indictment, was consistent with the "due administration of justice." *Sorrells v. United States*, 287 U.S. 435 (1932); *United States v. DiLopi*, 595 F.2d 1205 (2nd Cir. 1979).

In addition to clarifying the nature of the subject Internal Revenue Service personnel activities and the role witness Joseph Hamilton was legitimately pursuing in the premises, the described records as demanded (Doc. Nos. 8 and 55) could have established the want of any corrupt acts attributable to Petitioner and illuminated the motive which prompted the witness Inga Hunka to fabricate or exaggerate that the accused threatened to "blow Hamilton to pieces" in addition to the bases for other negative contents of the IRS dossier which was inherently prejudicial as presented to the petit jury and, apparently, to the Grand Jury (Doc. No. 1, Count One, item 2; Tr. V.

I, pp. 40-46; V. II, pp. 15-19). Fed. Rules Cr. Proc., Rules 12, 15 and 16, 18 U.S.C.; *In re Irving*, 600 F.2d 1027 (2nd Cir. 1979), certiorari denied 444 U.S. 866 (1979).

The ends of criminal justice would be defeated if judgments were to be found on a partial or speculative record without access to compulsory process to obtain evidence. *United States v. Nixon*, 418 U.S. 683 (1974); *United States v. Moreno*, 536 F.2d 1042 (5th Cir. 1975), rehearing denied 543 F.2d 1175 (1976).

IV. The Granting of Dilatory Motions at the Suggestion of the Government Resulting in an Unreasonably Long Delay Before the Trial in Spite of Timely Objections by the Accused Is Violative of Due Process and the Right to a Speedy Trial

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Against the background of the extensive litigation Petitioner had engaged with elements of the State Bar of Texas utilized by facets negative to him for incinerating predilection among officials in the Regional Office of the Internal Revenue Service, the recognition of an insupportable case against the accused, following prefatory conversations with the Federal Public Defender, influenced resort by the Respondent's counsel to dilatory tactics in speculation of creating a prosecutable case at a future point. This dilatory episode began with the pressuring of the Federal Public Defender to submit motions as ex parte (Doc. Nos. 9, 10 and 11) and for a continuance (Doc. No. 12), as for the accused, and dilatory responses by Respondent's official counsel to the Motion for Change of Venue (Doc. No. 2/13) and the Motion in Limine (Doc. No. 8/14) in addition to a grossly dilatory and unconstitutional motion for medical and mental examination (Doc. No. 15).

Petitioner reiterated his refusal to waive his right to a speedy trial (Doc. No. 17), but such response was unconstitu-

tionally disregarded by the United States District Court below. United States Code, Const. Amend. V and VI; *United States v. Herman*, 576 F.2d 1139 (5th Cir. 1978); *United States v. DiGilio*, 538 F.2d 972 (3rd Cir. 1976), certiorari denied 429 U.S. 1038 (1977); *United States v. Sebastian*, 428 F. Supp. 967 (WD NY 1977), affirmed 562 F.2d 211 (2nd Cir. 1977), affirmed 578 F.2d 1372 (2nd Cir. 1977).

No precedent exists for forcing an accused citizen to engage psychological or psychiatric examination in conjunction with a criminal proceeding without some evidence or manifestation of incompetency impeaching the accused. The evidentiary burden to prove competency or incompetency remains with the prosecution, and in the absence of evidence or a manifestation of incompetency on the part of the accused, which want characterized our immediate facts, the United States District Court had no Constitutional discretion to commit Petitioner for psychiatric examination, and the unlawful assertion of such authority is violative of Constitutional protections meriting a dismissal of the prosecution (Tr. V. III, p. 114, 1. 8-12). United States Code, Const. Amend. V and VI; *United States v. Herman*, 576 F.2d 1139 (5th Cir. 1978); *Kimmelman v. Morrison*, 106 S.Ct. 2574 (1986).

V. The Trial Court Contravened the Accused's Right to Compulsory Process in Declining Enforcement of a Subpoena Duces Tecum for Internal Revenue Service Records To Establish the Absence of an Ongoing "Proceeding" and That the Subject Revenue Officers Were Engaged Outside "The Due Administration of Justice" Related to the Indictment Below

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As the trial Court had not permitted the defense access to Internal Revenue Service records accumulated preliminary and giving rise to the charges and Indictment herein as sought duly

by Petitioner's discovery motions (Doc. No. 8), the defense reiterated its efforts to secure such data during the trial via a subpoena duces tecum prepared by Petitioner, Pro Se (Doc. No. 55; Tr. V. II, p. 3, l. 20-25; p. 4, l. 1-14; p. 5, l. 16—p. 10, l. 22; p. 14, l. 3-12). United States Code, Const. Amend. VI; Fed. Rules Cr. Proc., Rule 17(a), (c) and (g), 18 U.S.C. However, as part and parcel of the ruling on the Government's motion in limine (Doc. No. 71), the trial Court declined to enforce the compulsory process for witnesses, and details with respect to ulterior motives and other preliminaries to the subject charges and Indictment remained concealed throughout the trial. United States Code, Const. Amend. V, VI and XIV, §1; *United States v. Moreno,* 536 F.2d 1042 (5th Cir. 1975), rehearing denied 543 F.2d 1175 (1976).

The Sixth Amendment endeavors to provide an accused with the option to test the accuracy and validity of evidence through personal confrontation and cross-examination. Thus, the absence of the right of confrontation on the allegations of the Indictment (Doc. No. 1) and the testimony of Respondent's employees (Tr. V. III, pp. 2-4) that a "proceeding" was ongoing and that a named employee was operating consistent with the "due administration of justice" as such terms are expressed in the Indictment calls into question the ultimate integrity of the fact finding process. In addition to interrogating the witnesses provided by Respondent, Petitioner was entitled to examine the culpable or duly authorized representatives of Respondent regarding activities surrounding and giving rise to the Indictment to display the lack of any corrupt act on the part of Petitioner. *Ohio v. Roberts,* 448 U.S. 56 (1980).

Argument

VI. Counsel Below Engaged Unconstitutional Misconduct in Striking a Member of the Petit Jury Array Because She Was a Resident, Educated Adult of Negro Ancestry

During the jury selection process below, a lady of, apparently, middle age and Negro ancestry indicated in response to questioning by counsel in the case that she had experience as an educator. Counsel then elected to utilize peremptory challenges to exclude her from the panel, thereby unconstitutionally circumventing a trial by the accused's peers (Tr. V. I, p. 58, l. 6-9; p. 63, l. 13; p. 64, l. 8 and 24-25; p. 66, l. 15 and 16-25; p. 67, l. 1-23). United States Code, Const. Amend. V and VI; 50 C.J.S. Juries §136; *Thiel v. Southern Pacific Co.*, 328 U.S. 217 (1946). An accused is entitled to require that jury selection officials including the judiciary proceed in such a way as to compel utilization of all eligible for jury duty unless they are legitimately excused. *Willis v. Carson*, 324 F. Supp. 1144 (SD Miss. 1971); *United States v. Burkett*, 342 F. Supp. 1264 (DC Mass. 1972).

Counsel for the accused has not only the obligation to refrain from doing anything against the best interests of his client, but by reason of the trust and confidential relationship envisioned by the status, he must do everything consistent with proper professional conduct within his power to aid his client's interests. Title 28, United States Code, Section 1654; *Warrick v. Commissioner*, 173 F.2d 905 (8th Cir. 1949); *Castillo v. Estelle*, 504 F.2d 1243 (5th Cir. 1974); *Dillon v. Duckworth*, 751 F.2d 895 (7th Cir. 1984).

However, the adversary nature of judicial proceedings does not give attorneys for the Government a green light to abuse an accused merely because such attorney sits on the opposite side of the table. An attorney for the Government must take a special oath in addition to the general obligations of an attorney to execute faithfully duties of an assistant to the United States At-

torney. *United States v. Pignatiello,* 582 F. Supp. 251 (DC Colo. 1984). Thus, the assistant becomes a representative of the sovereign whose prescript is to govern impartially, and whose interest in a criminal prosecution is not to win the case by any means, but to obtain justice. Title 28, United States Code, Sections 543 and 547; *Dugan Drug Stores, Inc. v. United States,* 326 F.2d 835 (5th Cir. 1964); *Johnson v. United States,* 356 F.2d 680 (8th Cir. 1966), certiorari denied 385 U.S. 857 (1966).

The deliberate and intentional exclusion of a definitive class from the jury has been held to justify reversal of a judgment in *Thiel v. Southern Pacific Co.,* 328 U.S. 217 (1946), and a sovereign cannot subject an accused to indictment by a grand jury or trial by a petit jury that has been selected in an arbitrary and discriminatory manner. *Peters v. Kiff,* 407 U.S. 493 (1972).

Recently, issues of an "impartial jury" precisely coinciding with our immediate issue have been adjudicated. The Supreme Court of California has held that a prosecutor's utilization of peremptory challenges in a systematic effort to exclude a class of jurors from service on a petit jury was reversible error. *People v. Wheeler,* 583 P.2d 748 (Cal. 1978). Also, the Court of Appeals for the Sixth Circuit held that the prosecutor's retaliatory response in exercising peremptory strikes to exclude a definitive class from a petit jury was reversible error. *Booker v. Jabe,* 775 F.2d 762 (6th Cir. 1985). Ultimately, the Supreme Court of the United States reached a majority decision proscribing the use of peremptory strikes to arbitrarily exclude blacks from a petit jury in *Batson v. Kentucky,* 106 S.Ct. 1712 (1986), and the Eleventh Circuit has spelled out that the striking of a single black juror for racial reasons is forbidden. *United States v. David,* 803 F.2d 1567 (11th Cir. 1986).

Argument

VII. Counsel for the Accused Below Engaged Insidious Misconduct Detrimental to the Accused by Invoking the Rule Precluding Witnesses for the Accused From Reviewing the Trial Session Prompting More Absences for Recall Testimony

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Under conditions implying that he had been retained to assist the prosecution, counsel for the accused requested that witnesses absent themselves from the Courtroom at the beginning of testimony in the case (Tr. V. II, p. 20, l. 5-23; p. 21, l. 18—p. 22, l. 5).

The described response had the inherent effect of disheartening witnesses for the accused, as the Government's witnesses who had arrived at the Courtroom were permitted to remain therein. The results of such procedure, furthermore, caused witnesses for the accused to conclude that their testimony would be taken lightly, so as soon as the initial testimony of a witness was finished, for instance Cleophus L. Kennedy (Tr. V. III, p. 116, l. 4-6), he vacated the scene and was not available to bolster the testimony of other witnesses regarding Petitioner's personality and reputation.

Petitioner submits that the procedure referred to as intentionally engaged by counsel for the accused contrary to the interests of the accused conflicted with the standard of conduct under the attorney-client relationship contemplated by Title 28, United States Code, Section 1654. *Warrick v. Commissioner,* 173 F.2d 905 (8th Cir. 1949); *Dillon v. Duckworth,* 751 F.2d 895 (7th Cir. 1984).

Argument

VIII. The Trial Court Erred in Permitting Government Witnesses To Give Hearsay Testimony That a Proceeding Was in Progress Regarding the Charges Herein Where the Government Had Declined To Honor the Accused's Motion To Discover the Evidence Upon Which Their Hearsay Testimony Allegedly Derived

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While the confrontation clause of the Sixth Amendment and the hearsay rule are not coterminous, each provision strives to protect the same values. Both provisions seek to balance the need for relevant probative evidence versus the accused's interest in impeaching the accuracy or validity of evidence through personal confrontation or observation and cross-examination. United States Code, Const. Amend. VI; *Ohio v. Roberts*, 448 U.S. 56 (1980).

Thus, upon presentment of the instant fabricated Indictment to the accused, he, forthwith, invoked his right to observe the nature and contents of the charges against him, because the allegations were obviously fraudulent and exaggerated, for at no time had the accused threatened any Revenue Officer with personal harm as alleged by the witness Inga Hunka (Doc. No. 1, Count One and Count Two), and at no time had the accused threatened to harm Revenue Officer Joseph Hamilton with the intention to threaten or intimidate him or obstruct or impede him in the performance of his duties as alleged by the witnesses Joseph Hamilton and Gregory Rosen (Doc. No. 1, Count Three and Count Four; Tr. V. II, p. 15, l. 19—p. 19, l. 20).

Rule 16(a)(1)(C) of the Federal Rules of Criminal Procedure provides:

> "Upon request of the defendant the government shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which

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> are within the possession, custody or control of the government, and which are material to the preparation of his defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant."

Fed. Rules Cr. Proc., Rule 16(a)(1)(C), 18 U.S.C.

Not only were the evidentiary items demanded by the accused in the trial Court essential to determine whether a "proceeding" was in progress and whether the named personnel were engaged consistent with the "due administration of Justice" with respect to the Indictment, but, also, to determine the motive or influence for the absolute falsification by the witness Inga Hunka who alleged in Count One and Count Two of the Indictment (Doc. No. 1) that the accused threatened to "blow Hamilton to pieces."

The described absolutely false allegation on the part of the witness Inga Hunka was inherently prejudicial to the accused's case by improperly suggesting corrupt action by the accused pertinent to the remaining counts as no instruction was furnished the Grand Jury, apparently, or the petit jury which would effectively avoid associating and confusing evidence given to support one count with evidence offered to support another count resulting in a cumulative evidentiary effect detrimental to the accused on the counts involving tape recordings which were not wholly misrepresentative (Tr. V. I, pp. 40-43; V. II, pp. 15-19). Title 28, United States Code, Sections 543, 547 and 1654.

The precedents under Rule 16 are clear and unmistakable that the Government must permit discovery of evidence essential to the preparation of the accused's defense even under penalty of foregoing the prosecution if it were legitimate. *United States v. Heath*, 260 F.2d 623 (9th Cir. 1958); *In re Irving*, 600 F.2d 1027 (2nd Cir. 1979), certiorari denied 444 U.S. 866 (1979).

Argument

IX. The Court Below Erred in Admitting Evidence in Conjunction With Certain Antique Guns Owned by the Accused's Father and Seized at the Father's Residence in Livingston, Texas as the Accused Held No Vested Interest in the Antiques or the Residence, and No Conversation Emanated From the Accused With Respect to Livingston, Texas

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On January 10, 1985, officials from the Austin, Texas and Houston, Texas offices of the Internal Revenue Service converged on the premises of J. W. Ratcliff in the 1100 Block of Preston off Holhausen in Livingston, Polk County, Texas. The described J. W. Ratcliff is the father of the accused and the Registered Agent with the Texas Secretary of State for Dunbar Resources-Livingston, Inc. (Tr. V. III, p. 90, l. 6-8) a Texas corporation. While on the subject premises, the noted officers undertook an exhaustive search and ramshackle event and admittedly seized a couple of antique .22 caliber rifles owned by J. W. Ratcliff (Tr. V. I, p. 169; V. III, p. 7, l. 11—p. 12, l. 25). Fed. Rules Evid. Rule 201, 28 U.S.C.

It was highly improper and imflammatory for the United States District Court to admit the antique guns as evidence before the jury because there was no correlation between such evidence and the accused.

Only relevant evidence as defined by Fed. Rules Evid. Rule 401, 28 U.S.C., may be introduced into evidence against an accused, and even:

> "relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, or misleading the jury . . ." Fed. Rules Evid. Rule 403, 28 U.S.C.

Kilarjian v. Horvath, 379 F.2d 547 (2nd Cir. 1967).

Argument

In our immediate case, the prosecution has not shown any ownership and vested interest in the accused with respect to the realty searched at Livingston, Texas (Tr. V. III, p. 18, l. 6-13; pp. 90-91); nor the antique guns seized at Livingston, Texas which were both unequivocally established to be the property of J. W. Ratcliff (Tr. V. III, p. 18, l. 6-13; pp. 92-94).

Still further, it has not been shown by the Government that any telephone communications were held with the accused at Livingston, Texas (Tr. V. III, p. 15, l. 2-25); that he claimed any residence at Livingston, Texas (Tr. V. III, p. 116); or that the accused possessed any relevant proximity with Livingston, Texas (Tr. V. III, pp. 134-135, l. 17). Fed. Rules Evid. Rule 403, 28 U.S.C. To the contrary, it was set forth below that the subject telephone conversation was made to the accused's Office at 4101 San Jacinto in Houston, Harris County, Texas (Tr. V. III, pp. 14-15), and it has not been proposed that any weapons were attributable to Petitioner at such premises. Title 28, United States Code, Section 1654; *Warrick v. Commissioner,* 173 F.2d 905 (8th Cir. 1949); *United States v. Jackson,* 405 F. Supp. 938 (ED NY 1975); *Aetna Life and Casualty Insurance Co. v. Lavoie,* 106 S.Ct. 1580 (1986).

X. The United States District Court Below and Its Officers Fostered a Conspiracy To Harass, Incriminate and Convict the Accused as a Plenary View of the Proceedings Below Reveals

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The abuse of the legal process which has characterized the immediate proceedings below and the preliminaries thereto is patently violative of Petitioner's Constitutional rights, so redress and rectification should be afforded forthwith.

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Argument

Congress has defined the duties of the United States District Court and its officers, and conduct inconsistent with such standards should not be tolerated. Title 28, United States Code, Sections 453, 454, 543, 547 and 1654.

Error was prelusively committed by the Office of the United States Attorney in presenting a witness to relate misleading and fabricated testimony before the Grand Jury that the accused threatened to "blow Hamilton to pieces" (Doc. No. 1, Count One and Count Two; Tr. V. V, p. 2, l. 21—p. 3, l. 5). This testimony coupled with the antique guns of J. W. Ratcliff from Livingston, Texas, which had no correlation to extemporaneous communications of the accused in Houston, Texas, was unjustifiably pejudicial and inflammatory and, without doubt, effected the return of a true bill and ultimate Judgment which would not have resulted in the absence of such prejudicial evidence (Tr. V. III, pp. 47-61). United States Code, Const. Amend. V; *United States v. Sclafani,* 265 F.2d 408 (2nd Cir. 1959), certiorari denied 360 U.S. 918 (1959).

It was, also, improperly contaminating, in the perspective of the Government's familiarity with Petitioner's admission to practice law in the State and the pendency of civil actions by the accused suing Internal Revenue Service personnel, for the prosecution to suggest to the Grand Jury that tape recorded statements attributed to the accused describe anything other than that Petitioner would continue a course of asserting his legal rights to the fullest (Tr. V. III, p. 116—IV, p. 55) since he expressly specified according to such tapes that physical harm as proposed by Revenue Officer Joseph Hamilton was not contemplated (P. 19; Tr. V. III, p. 30, l. 7-21; p. 77, l. 2-8; p. 132, l. 15—p. 134, l. 3). Fed. Rules Evid. Rule 201(d), 28 U.S.C.; *United States v. Hylton,* 559 F. Supp. 872 (SD TX 1982), affirmed 710 F.2d 1106 (5th Cir. 1983).

Again, among the irregularities fostered by the United States District Court and its Officers below, it engaged unconstitutional misconduct by permitting the Government to steer

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the deliberations to terminate each day on testimony and considerations inherently favorable to the prosecution which had the detrimental effect of lingering on the jurors' minds overnight resulting in calculated prejudice against the accused on two of the three days that testimony and evidence were received at the trial (Tr. V. I, p. 65; V. II, p. 176; V. III, pp. 147-148). Title 28, United States Code, Sections 453, 454, 543, 547 and 1654; *Dugan Drug Stores, Inc. v. United States*, 326 F.2d 835 (5th Cir. 1964); *United States v. Pignatiello*, 582 F. Supp. 251 (DC Colo. 1984); *United States v. Bray*, 546 F.2d 851 (10th Cir. 1976).

Still further, the trial Court and its Officers engaged misconduct by evading presentation to the jury of a formal definition for "waste" consistent with the usage of such term on the tape recorded conversation offered into evidence (Tr. V. III, pp. 132-134). Title 28, United States Code, Section 1654; *Aetna Life and Casualty Insurance Co. v. Lavoie*, 106 S.Ct. 1580 (1986).

Such United States District Court tied Petitioner's hands by its order of July 18, 1985 (not reflected by computer printout of docket entries; See, also, Motion to Set Aside Order Precluding Pro Se Motions attached to Notice of Appeal, Doc. No. 56) ruling that it would not permit pro se motions in the litigation. Thus, in spite of Petitioner's recognition of irregularities and errors during the course of proceedings below, to the extent that his retained counsel elected to disregard or join in the malfeasance, the accused had no immediately available option for terminating or curtailing the misconduct. *Dugan Drug Stores, Inc. v. United States*, 326 F.2d 835 (5th Cir. 1964); *Adamson v. Commissioner*, 745 F.2d 541 (9th Cir. 1984).

Additionally, Petitioner emphasizes that interrogation tactics utilized by counsel for the accused in the trial Court were objectionable and less than effective. *Kimmelman v. Morrison*, 106 S.Ct. 2574 (1986).

Negative features of such interrogation included emphasizing at V. II, p. 82, l. 7-18, of the Transcript, the tape transcribers' conclusion that the accused's examination and discovery tactic, as recorded, were incoherent when such counsel's duty was to impeach the transcribers' derogatory description.

Secondly, following interrogation beginning with V. II, p. 84, l. 7-18, instead of getting off on a philosophical tangent, counsel should have continued to examine the witness, Joseph Hamilton, particularly and directly about matters geared to the related tax collection effort to illuminate the want of any corrupt act on the part of the accused, and that the subject prosecuting witness was not engaged in furthering the "due administration of Justice" in the premises.

For instance, the interrogation could have properly taken a form following V. II, p. 84, l. 18, to wit:

> I. Is there any condition under which you could have access to the auditing files and calculations giving rise to the subject collection effort?
>
> A. If so, what are the condition elements and what prevented such review safeguard in the immediate instance?
>
> B. If not, what policy considerations dictated this procedure?
>
> II. What is your educational background?
>
> A. As a prerequisite to your IRS job status, were you required to study accounting, and, if so, particularize the course?
>
> B. As a condition of your IRS job status, were you required to study taxation, and, if so, particularize the course?
>
> C. Have you ever given any consideration to the reasons the U.S. Treasury Department makes certain

training a prerequisite for the particular job you held in the premises?

D. Are you convinced that one objective of the requirement training for your job is that you possess a more thorough appreciation for what you are doing?

E. Do you conceive, also, that if any errors were discovered by you in the audits and calculations giving rise to a collection task assigned to you, the IRS would prefer that you bring the discrepancy to the attention of your supervisors and superiors?

F. (If the answer to query "E" is in the affirmative:) Then, why did you go into the collection effort involving the accused blindly and totally disregardful of any and all inaccuracies pertinent to the subject IRS audits and miscalculation?

The above line of cross-examination would have allowed lay jurors to more clearly appreciate a proper instruction under the language of 18 U.S.C. §1505 and 26 U.S.C. §7212(a), as affixed to the Indictment below. Title 18, United States Code, Section 1505; Title 26, United States Code, Section 7212(a).

At V. III, p. 134, l. 11-15, counsel's interrogation was notoriously improperly phrased as directed to the accused on direct examination so as to suggest and give the false appearance that the accused had a residence in Livingston, Texas.

Still further, at V. III, p. 172, after the conclusion of Petitioner's response at l. 16, counsel should have brought to the attention of the jury that Internal Revenue Service personnel had questioned several residents of Livingston, Texas who had contributed to an IRS dossier, without the knowledge of Petitioner, reflecting falsely that such accused had a reputation for violence, and that those compilations created apprehension about further encroachment against the accused and his business associates under the guise of collecting taxes, rather than

any communications attributable to the accused himself. Such line of questioning, also, would have been appropriate for directing to the witnesses Gregory Rosen and Joseph Hamilton under cross-examination to Counter the Government's objective in introducing evidence of the described recorded conversation.

Also, upon the concluding of Government cross-examination of Petitioner, before resting, counsel for the accused should have engaged redirect examination of such accused to further clarify that the filing of a certain Rule 60(b) Motion in the United States District Court for the Southern District of New York, No. 83 CIV .6896 (M.E.L,), requesting further clarification pertinent to general rectification as well as the doctrine of res judicata, was a legitimate legal procedure, and that it was proper for local officials to be aware of such pending Motion to inteligently evaluate its impact on pending tax collecting objectives, if any were ongoing. (See V. III, p. 145, 1. 9—p. 146, 1. 1 for similar evidentiary presentation.)

Finally, it appears that, deliberately, the issue of entrapment was not addressed in the proceedings below. Entrapment as engaged by Respondent nullifies any evidentiary significance to the subject responses elicited from the accused as presented by the tape recording (Doc. No. 1, Count Three and Count Four; Tr. V. II, p. 17, 1. 20—p. 19, 1. 20).

Counts Three and Four of the Indictment from below consist of an unconstitutional entrapment routine on the part of the Regional Office of the Internal Revenue Service utilizing secretive telephone recordation techniques without the knowledge of the accused calculated to solicit unlawful threats by the accused which effort in fact produced verbal responses from Petitioner construed by the Government to be illegal and which the prosecution fraudulently enhanced and manipulated before the Grand Jury, the United States District Judge below and the petit jury to allege and conjure violations of Title 18, United States Code, Section 1505, and Title 26, United States Code,

Section 7212(a) (Tr. V. II, p. 86, l. 18—p. 91, l. 15; V. III, p. 38, l. 23—p. 39, l. 11). *United States v. Hylton*, 558 F. Supp. 872 (SD TX 1982), affirmed 710 F.2d 1106 (5th Cir. 1983).

The doctrine of entrapment is based on the concept that officers of the law shall not attempt to incite crime merely to punish an individual. 22 CJS Criminal Law §452.

One such United States Supreme Court precedent substantially similar to our immediate issues is *Sherman v. United States*, 356 U.S. 369 (1958), where an informer testified that he sought to persuade an accused to obtain a source of narcotics while they both held patient status in the same clinic. The informer told of recurring meetings ultimately resulting in the accused's participating in securing narcotics for their mutual usage. This Court held that the informer's conduct constituted entrapment as a matter of law because it induced the accused to resume a habit which he was attempting to abandon.

Sherman v. United States, ibid., followed the earlier landmark case cited as *Sorrells v. United States*, 287 U.S. 435 (1932). There, an accused was charged with possessing and selling a half gallon of whiskey. The Government argued that if the defense of entrapment by its agent, who made the purchase, was applicable, it should have been pleaded in bar to further proceedings under the indictment, but the Supreme Court reversed the conviction holding that the defense of entrapment could be raised under a not guilty plea, and the case was remanded to the District Court with instructions to quash the indictment and discharge the accused.

Within the Fifth Circuit in a proceeding under the former Internal Revenue laws, an accused was charged with transferring marijuana to an Internal Revenue Service employee for monetary consideration without written orders in violation of the Marijuana Tax Act. The Court of Appeals held therein that officers of the Government cannot employ extraordinary temptations or inducements to commit a forbidden act, and

that the defense of entrapment was a bona fide issue in the case Title 26, United States Code, 2590, et seq., now repealed; Title 42, United States Code, Section 1981; *Hamilton v. United States,* 221 F.2d 611 (5th Cir. 1955).

In our immediate facts, the accused had no suspicion that the Government was attempting to develop a threat, obstruction, impeding or intimidation case against him, and he perceived their endeavor, during the general period of the recorded telephone conversation, was limited to Internal Revenue Service employee civil irregularities. Otherwise, Petitioner's voice tone and diction would have been more reserved in the pertinent conversation (Tr. V. III, pp. 14-15). The accused has been appearing before the Internal Revenue Service for 25 years as an attorney and taxpayer representative utilizing similar demeanor and personality traits, and over this period no adversary has objected to the legality if such approach. Petitioner submits that the arbitrary invocation of such limitation without due process of law is violative of the First and Fifth Amendments. United States Code, Const. Amend. I and V; *Lefton v. Hattiesburg,* 333 F.2d 280 (5th Cir. 1964).

Another authority cited in United States Code Annotated under Section 7212(a) of Title 26 which conforms impressively to our immediate issues is *In re Irving,* 600 F.2d 1027 (2nd Cir. 1979), certiorari denied 444 U.S. 866 (1979), which involved National Labor Relations Board litigation wherein the Board was directed to produce authorization cards, secured in connection with certifications and petitions before the agency, for utilization in a criminal proceeding. The accused therein observed that if the cards were forged or otherwise fraudulent, they might provide the defense with a basis for effectively asserting the doctrine of entrapment. The District Court refused to quash the subpoena, and the Court of Appeals affirmed. *United States v. DiLopi,* 595 F.2d 1205 (2nd Cir. 1979); *Kimmelman v. Morrison,* 106 S.Ct. 2574 (1986).

The rationale focused upon herein was, also, thrashed out in *United States v. Nixon*, 418 U.S. 683 (1974), where Presidential tapes were subpoenaed in conjunction with litigation after Executive branch employees of the United States Government were indicted in the Watergate episode, and the Supreme Court unequivocally elaborated that:

> "the ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of facts."

Thus, it follows that full details of the Internal Revenue Service investigative authorizations, audits and reports applicable to the case were essential for review by the defense in our instant proceedings not only to shed light on the motives for falsifications and fabrications on the part of governmental employees giving rise to the Indictment, but, also, to reveal provocation, inducement and other elements of entrapment by Respondent along with the absence of any corrupt act by Petitioner. Fed. Rules Cr. Proc., Rules 16(a)(1)(C) and 17(a), (c) and (g), 18 U.S.C.; Title 28, United States Code, Sections 455, 543, 547 and 1654; *United States v. DiLopi*, 595 F.2d 1205 (2nd Cir. 1979); *Aetna Life and Casualty Insurance Co. v. Lavoie*, 106 S.Ct. 1580 (1986); *Kimmelman v. Morrison*, 106 S.Ct. 2574 (1986).

CONCLUSION

The decision of the United States Court of Appeals, Fifth Circuit, affirming the Judgment of the United States District Court below should be reversed and rendered by quashing the jury's verdict with respect to Count Three and Count Four (Doc. No. 1). *Sorrells v. United States,* 287 U.S. 435 (1932).

Date: January 30, 1987

ELIJAH W. RATCLIFF
FCI No. 26215-079
Petitioner, Pro Se

AFFIDAVIT OF SERVICE

Elijah W. Ratcliff, Petitioner, Pro Se, certifies and states under penalties of perjury as if executed before a proper notary public that a copy of the foregoing Petition for Writ of Certiorari was served in triplicate on Counsel for Respondent herein by first class United States Mail this 27th day of February, A.D., 1987, addressed to:

The Honorable Rex E. Lee
Solicitor General of the U.S.
U.S. Department of Justice
Tenth Street and Constitution Avenue
Washington, D.C. 20530

ELIJAH W. RATCLIFF
Petitioner, Pro Se

APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Criminal No. H 85 28

United States of America
v.
Elijah W. Ratcliff

INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE

1. That at all times material to the Indictment, the Internal Revenue Service, Department of the Treasury, was an agency of the United States;

2. That the Internal Revenue Service examined the tax returns of Defendant ELIJAH W. RATCLIFF for the years 1978, 1979, 1980, and 1981 and determined that said Defendant was delinquent in the approximate amounts of $2,565.61, $4,765.80, $17,717.70 and $19,833.77, respectively;

3. That the delinquent accounts for 1978, 1979, 1980, and 1981 were assigned to Revenue Officer Joseph T. Hamilton for collection;

4. That on December 17, 1984, the Defendant called the Briarpark Office of the Internal Revenue Service in Houston, Texas and spoke with Revenue Officer Inge Hunka; and

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5. That on or about December 17, 1984, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the Defendant ELIJAH W. RATCLIFF did, by threat and by threatening communication, obstruct and impede and endeavor to obstruct and impede the due and proper administration of the law under which a pending proceeding was being had before an agency of the United States, that is, the Internal Revenue Service, in that said Defendant threatened that if Revenue Officer Hamilton came out to his residence, the Defendant would "blow Hamilton to pieces". (Violation: Title 18, United States Code, Section 1505).

COUNT TWO

That on December 17, 1984 in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the Defendant ELIJAH W. RATCLIFF, did knowingly and willfully by threat of force endeavor to intimidate and impede an officer and employee of the United States, that is, Revenue Officer Joseph T. Hamilton of the United States Internal Revenue Service, Department of the Treasury, acting in an official capacity under Title 26, United States Code, as the Defendant then knew, by threatening to "blow Revenue Officer Hamilton to pieces". (Violation: Title 26, United States Code, Section 7212(a)).

COUNT THREE

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1. That at all times material to the Indictment, the Internal Revenue Service, Department of the Treasury, was an agency of the United States;

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2. That the Internal Revenue Service examined the tax returns of Defendant ELIJAH W. RATCLIFF for the years 1978, 1979, 1980, and 1981 and determined that said Defendant was delinquent in the approximate amounts of $2,565.61, $4,765.80, $17,717.70 and $19,833.77, respectively;

3. That the delinquent accounts for 1978, 1979, 1980, and 1981 were assigned to Revenue Officer Joseph T. Hamilton for collection;

4. That on January 8, 1985, Revenue Officer Hamilton placed a telephone call from the Westpark Office of the Internal Revenue Service to the Defendant, ELIJAH W. RATCLIFF, at (713) 523-2726; and

5. That on or about January 8, 1985, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the Defendant ELIJAH W. RATCLIFF did, by threat of force and by threatening communication, obstruct and impede and endeavor to obstruct and impede the due and proper administration of the law under which a pending proceeding was being had before an agency of the United States, that is, the Internal Revenue Service, in that said Defendant threatened to "waste" Revenue Officer Hamilton if the Defendant caught Revenue Officer Hamilton attempting to collect the taxes assessed against the Defendant. (Violation: Title 18, United States Code, Section 1505).

COUNT FOUR

That on or about January 8, 1985, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the Defendant ELIJAH W. RATCLIFF, did knowingly and willfully by threat of force endeavor to intimidate and impede an officer and employee of the United States, that is,

Indictment

Revenue Officer Joseph T. Hamilton of the United States Internal Revenue Service, Department of the Treasury, acting in an official capacity under Title 26, United States Code, as the Defendant then knew, by threatening to "waste" Revenue Officer Hamilton if the Defendant caught Revenue Officer Hamilton attempting to collect the taxes assessed against the Defendant. (Violation: Title 26, United States Code, Section 7212(a)).

A TRUE BILL

s/FRANK R. GLASS
Foreman of the Grand Jury

DANIEL K. HEDGES
United States Attorney

BY: NANCY L. HOLLEY
Assistant United States Attorney

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 86-2436
Summary Calendar

UNITED STATES OF AMERICA,
Plaintiff-Appellee

VERSUS

ELIJAH W. RATCLIFF,
Defendant-Appellant

Appeal From the United States District Court for the Southern District of Texas.

(December 17, 1986)

Before REAVLEY, JOHNSON and DAVIS, Circuit Judges.

DAVIS, Circuit Judge:

Elijah W. Ratcliff appeals his conviction for two related offenses: obstructing a proceeding of the Internal Revenue Service by means of a threatening communication and interfering with an internal revenue officer by threat of force. We affirm.

I.

This case began when the Houston branch of the Internal Revenue Service instituted proceedings against Ratcliff in order to collect the $48,980.74 he owed in personal income tax for the

years 1978 to 1981. Revenue officer Joseph Hamilton administratively seized one of Ratcliff's bank accounts on December 14, 1984, and placed liens on several pieces of Ratcliff's property. On December 17, a man identifying himself as either "Ratcliff Reynolds" or "Ratcliff Realty" called the IRS in Houston stating that if Hamilton came "out there" again, he would "blow him to pieces." On January 4, 1985, Ratcliff visited the IRS office and told revenue officer Inge Hunka that he was there to "see what Hamilton's problem was." Hamilton was not in the office at the time.

With the assistance of IRS internal security, Hamilton placed a monitored telephone call to Ratcliff on January 8. Ratcliff told Hamilton in the tape-recorded conversation that: "If I find out you [sic] acting outside the scope of your authority, I'm gonna waste you." Ratcliff also warned that "if you want to be blown to pieces, just put yourself in a position to do so. . . . It's no, no confusion about what a man means when he's saying blowing somebody to pieces."

Two days later Ratcliff was arrested at his residence in Livingston, Texas. A search of his residence uncovered two rifles and two boxes of cartridges. One of the rifles, a loaded .22 caliber semiautomatic, was found underneath Ratcliff's bed.

Ratcliff was charged with obstructing a proceeding of the IRS in violation of 18 U.S.C. §1505, and interfering with the administration of the internal revenue laws in violation of 26 U.S.C. §7212(a). On February 7, 1985, the grand jury returned a four-count indictment: two counts based on the threatening telephone call to officer Hunka and two counts based on the monitored telephone call to Ratcliff. Ratcliff's case was tried before the Honorable Carl O. Bue, Jr., on May 19, 1986. A unanimous jury convicted Ratcliff of the two counts based on the recorded telephone conversation; Ratcliff was found not guilty of the remaining two counts. Ratcliff now appeals.

II.

A. Motion for Recusal

Ratcliff first complains that Judge Bue should have recused himself because he presided over a previous "civil rights removal action" involving Ratcliff. Ratcliff does not identify the nature of the action or why it would have presented a conflict for Judge Bue. The claim has no merit: a judge is not considered biased simply because he presided over a defendant in an unrelated previous case. The bias must derive from an extrajudicial source. **United States v. Harrelson,** 754 F.2d 1153, 1165 (5th Cir. 1985), **cert. denied,** 106 S.Ct. 277.

B. Denial of Various Discovery Requests

Ratcliff next complains that the trial court erred by denying his discovery request for all records and investigative reports substantiating that he owed back taxes. Ratcliff claims he needed these records to show that the IRS fabricated the charge that Ratcliff threatened to "blow [Hamilton] to pieces." The claim is meritless. Not only does the trial court have broad discretion over discovery orders, **Sanders v. Shell Oil Company,** 678 F.2d 614 (5th Cir. 1982), but the validity of the tax liability was not relevant to the charges against Ratcliff.

We likewise reject the argument that the trial court should have enforced Ratcliff's subpoena for these documents. Ratcliff asked for and received the subpoena on the first day of trial. The subpoena was served the same day, and the IRS apparently made a good faith search for the records. Ratcliff made no motion for enforcement of the subpoena and he offers no reason

why the court should have acted **sua sponte.** We detect no error in the trial court's actions.

C. Speedy Trial

Under the Speedy Trial Act, Ratcliff had the right to be brought to trial within seventy days from the date of his indictment. 18 U.S.C. §3161(c)(1). Certain periods of delay may be excluded, however, from the computation of this seventy-day trial deadline. Ratcliff complains that the delays preceding his trial violate the Act. We find that any delay was justifiable and the Act was satisfied.

Ratcliff was indicted on February 7, 1985. Ratcliff's various pretrial motions accounted for excludable delay from February 19, 1985, through March 26, 1985. The continuance granted in order to obtain substitute counsel accounted for excludable delay from March 26, 1985, through July 18, 1985. Ratcliff's failure to submit to a psychological examination accounted for excludable delay from July 18, 1985, through January 6, 1986. Ratcliff's interlocutory appeals and his numerous motions to dismiss, amend bail, and grant discovery accounted for excludable delay from January 6, 1986, through April 25, 1986. Trial began on May 19, 1986.

D. Impartial Jury

Ratcliff, who is black, claims that the government impermissibly discriminated against him by utilizing a peremptory challenge to exclude a black female from the jury. **See Batson v. Kentucky,** 90 L.Ed. 2d 69 (1986). Ratcliff's claim is unavailing for two reasons. First, Ratcliff failed to timely raise this

objection at trial. Second, Ratcliff does not establish a **prima facie** case of purposeful discrimination as required by **Batson.** It is insufficient that the government merely challenged a prospective juror whose race is the same as that of the defendant; the defendant must "raise an inference tht [sic] the prosecutor used the practice to exclude the veniremen from the petit jury on account of their race." **Id.** at 87-88.

Not only has Ratcliff failed to raise an inference of purposeful discrimination, but in the instant case, there were race-neutral reasons for excluding this juror: she fell asleep during the jury selection process, she had previously had problems with the IRS, and she had taught tax preparation courses. Together with the fact that two of the remaining twelve jurors were black males, we see no hint of racial discrimination in this case.

E. Introduction of the Firearms as Evidence

Ratcliff argues next that the firearms should not have been admitted into evidence because his father was their true owner. Ratcliff's emphasis on ownership is irrelevant. The evidence helped prove Ratcliff's access to firearms and his state of mind in threatening Hamilton. The firearms were found in a search of Ratcliff's residence, and a loaded rifle was found under Ratcliff's bed. The weapons were within Ratcliff's control; the fact that they belonged to his father was irrelevant to their admissibility.

F. Refusal to Take Notice of Pro Se Motions

Ratcliff was represented by competent counsel at all times in the proceedings below. Ratcliff nevertheless persisted in fil-

ing pro se motions, often over the objection of his own counsel. The district court ultimately refused to take notice of these motions, and ordered Ratcliff to desist in filing them. We find no error in the trial court's decision.

III. Conclusion

Ratcliff's remaining allegations of error are frivolous and do not merit discussion. The district court's judgment is therefore

AFFIRMED.

FIFTH CIRCUIT STATEMENT ON PETITIONS FOR REHEARING OR REHEARING EN BANC

NECESSITY FOR FILING

It is not necessary to file a petition for rehearing in the Court of Appeals as a prerequisite to the filing of a petition for certiorari in the Supreme Court of the United States.

PETITION FOR PANEL REHEARING

A petition for rehearing is intended to bring to the attention of the panel claimed errors of fact or law in the opinion. It is *not* to be used for reargument of the issue previously presented or to attack the court's well settled summary calendar procedures. Petitions for rehearing are reviewed by panel members only. Four copies of all petitions for rehearing shall be filed.

EXTRAORDINARY NATURE OF SUGGESTIONS FOR REHEARING EN BANC

A suggestion for rehearing en banc is an extraordinary procedure which is intended to bring to the attention of the entire court a precedent-setting error of exceptional public importance or an opinion which directly conflicts with prior Supreme Court or Fifth Circuit precedent. Alleged errors in the determination of state law, or in the facts of the case (including sufficiency of the evidence), or error asserted in the misapplication of correct precedent to the facts of the case, are matters for *panel rehearing* but not for rehearing en banc.

THE MOST ABUSED PREROGATIVE

Suggestions for rehearing en banc are the most abused prerogative of appellate advocates in the Fifth Circuit. While such suggestions were filed in 13% of the cases decided by this circuit last year, less than 1% of the cases decided by the court

are reheard en banc; and most of the rehearings granted resulted from a request for en banc consideration by a judge of the court initiated independent of any suggestion.

PETITION FOR REHEARING EN BANC

The form, contents and number of copies of the suggestion are set out in Local Rule 35 copied on reverse side.

OP-JDT-8
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Loc.R. 35. DETERMINATION OF CAUSES BY THE COURT EN BANC

35.1 *Suggestion*. A suggestion of en banc consideration upon initial hearing or rehearing may be made as provided in FRAP 35 and herein or by any judge of the Court in active service on his own motion. If en banc consideration is granted, every party shall furnish to the Clerk 20 additional copies of every brief the party has previously filed, and 20 copies of each supplemental brief on rehearing the party may file. See also the last sentence of Loc.R. 41 for effect of granting rehearing.

35.2 *Form of Suggestion*. TWENTY COPIES of every suggestion of en banc consideration, whether upon initial hearing or rehearing, shall be filed. The suggestion shall not be incorporated in the petition for rehearing before the panel if one is filed, but shall be complete in itself. In no case shall a suggestion of en banc consideration adopt by reference any matter from the petition for panel rehearing of from any other briefs or motions in the case. A suggestion of en banc consideration shall contain the following items, in order:

35.2.1 Certificate of interested persons required for briefs by 28.2.1;

35.2.2 If the party suggesting en banc consideration is represented by counsel, one or both of the following statements of counsel, as applicable:

> I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decision(s) of the United States Court of Appeals for the Fifth Circuit [or the Supreme Court of the United States], and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this Court:
>
> [citing specifically the case or cases]
>
> I express a belief, based on a reasoned and studied professional judgment that this appeal involves one or more questions of exceptional importance:
>
> [set forth each question in one sentence]
>
> _____
>
> Attorney of record for _____

Counsel are reminded that in every case the duty of counsel is fully discharged without filing a suggestion for rehearing en banc unless the case meets the rigid standards of FRAP 35(a).

35.2.3 Table of contents and citations:

35.2.4 Statement of the issue or issues asserted to merit en banc consideration. It will rarely occur that these will be the same as those appropriate for panel rehearing. A suggestion of en banc consideration must be limited to the circumstances enumerated in FRAP 35(a).

35.2.5 Statement of the course of proceedings and disposition of the case:

35.2.6 Statement of any facts necessary to the argument of the issues;

35.2.7 Argument and authorities. These shall concern only the issues required by paragraph (.2.4) hereof and shall address specifically, not only their merit, but why they are contended to be worthy of en banc consideration.

35.2.8 Conclusion; and

35.2.9 Certificate of Service.

35.3 *Response to Suggestion*. No response to a suggestion of en banc consideration will be received unless requested by the Court.

35.4 *Time and Form—Extensions*. Any petition for a suggestion of en banc consideration upon rehearing must be filed within 14 days after the date of the opinion. Counsel should not request extensions of time except for the most compelling reasons. Printing delays will not be considered sufficient justification for extensions as clear and legible reproduced copies of typewritten petitions are authorized in the form prescribed by FRAP and Loc.R. 32.

35.5 *Length*. A suggestion for en banc consideration shall not exceed 15 Pages in length, without permission of the Court.

[For other provisions relating to determination of causes by the Court En Banc and Petition for Rehearing, see FRAP 32, 35, 40, Loc.R. 41.3 and I.O.P. following Loc.R. 40.]

OP-JDT-8
Rev. 7/84

Judgment & Probation Commitment Order

United States District Court for
SOUTHERN DISTRICT OF TEXAS
DOCKET NO. — H-85-28-01

United States of America vs.
DEFENDANT—ELIJAH W. RATCLIFF
P.O. BOX 1529
YPSILANTI, MICHIGAN

JUDGMENT AND PROBATION COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date—Month, June; Day, 27; Year, 1986

COUNSEL—WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived his right to counsel.

—WITH COUNSEL—DAVID BIRES (Name of Counsel)

PLEA / / **GUILTY,** and the court being satisfied that there is a factual basis for the plea,

/ / **NOLO CONTENDERE,**

/X/ NOT GUILTY

FINDING & JUDGMENT

There being a verdict of

/ / **NOT GUILTY.** Defendant is discharged

/X/ GUILTY.

Defendant has been convicted as charged of the offense(s) of obstruction of proceeding before departments, agencies and committees in violation of Title 18, United States Code, Section 1505 as charged in Count 3 of the indictment; and attempt to interfere with Internal Revenue Laws with corrupt or forcible interference in violation of Title 26, United States Code, Section 7212(a) as charged in Count 4 of the indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR as to Count 4. A special monetary assessment of $25.00 is ordered. As to Count 3, imposition of sentence is suspended and the defendant is place on probation with supervision for a period of THREE (3) YEARS. A $50.00 special monetary assessment is ordered. Said sentence to commence upon discharge from imprisonment as to Count 4.

SPECIAL CONDITIONS OF PROBATION

As a special condition of probation, the defendant is ordered to complete ONE HUNDRED FIFTY (150) HOURS of community service each of the THREE YEARS that he is on probation, for a total of FOUR HUNDRED FIFTY (450) HOURS. The defendant is also ordered to pay the cost of prosecution in the amount of $3,889.23.

The defendant is further required to notify the United States Attorney, Attention Collection Division, P.O. Box 61129, Houston, Texas 77208, in the event of any change in the name or address of the defendant from what is stated above.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue

a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and Voluntary Surrender to designated institution is ordered.

SIGNED BY APPROVED: s/JD

/X/ U.S. District Judge

U.S. Magistrate

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer

CERTIFIED AS A TRUE COPY ON
THIS DATE 7-10-86
By s/P. [Illegible]
( ) Clerk
(X) Deputy

CARL O. BUE, JR. Date 7-8-86

GENERAL CONDITIONS OF PROBATION

Where probation has been ordered the defendant shall, during the period of probation, conduct himself as a law-abiding, industrious citizen and observe all conditions of probation prescribed by the court. **TO THE DEFENDANT**—You shall:

(1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer;

(2) associate only with law-abiding persons and maintain reasonable hours;

(3) work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. (When out of work, notify your probation officer at once and consult him prior to job changes);

(4) not leave the judicial district without permission of the probation officer;

(5) notify your probation officer immediately of any change in your place of residence;

(6) follow the probation officer's instructions and report as directed.

The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

Maximum probation period (per indictment or information) which may be imposed on defendant eligible for sentencing under the Youth Corrections Act, 18 U.S.C. §5005 et seq. is one year for conviction of a misdemeanor or six months for conviction of a petty offense.

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to_____

Defendant noted appeal on _____

Defendant released on _____

Mandate issued on _____

Defendant's appeal determined on _____

Defendant delivered on _____ to_____

at , the institution designated by the Attorney General, with a certified copy of the within Judgment and Commitment.

_____

United States Marshal

By_____

Deputy Marshal

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED:

Constitutional Provisions Involved:

United States Code, Const. Amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Code, Const. Amend. V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the malitia, [sic] when in actual service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Code, Const. Amend. VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

United States Code, Const. Amend. XIV, Sec. 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutes Involved:

Title 18, United States Code, Section 1505:

Obstruction of proceedings before departments, agencies, and committees.

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness in any proceeding before any department or agency of the United States, or in connection with any inquiry or investigation being had by either House, or any committee of either House, or any joint committee of the Congress; or

Whoever injures any party or witness in his person or property on account of his attending or having attended such proceeding, inquiry, or investigation, or on account of his testifying or having testified to any matter pending therein; or

Whoever with intent to avoid, evade, prevent, or obstruct compliance in whole or in part with any civil investigative demand duly and properly made under the Antitrust Civil Process Act willfully removes from any place, conceals, destroys, mutilates, alters, or by other means falsifies any documentary material which is the subject of such demand; or

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which such proceeding is being had before such department or agency of the United States, or the due and proper exercise of the power of inquiry under which such inquiry or investigation is being had by either House or any joint committee of the Congress—

Shall be fined not more than $5,000.00 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 770; Sept. 19, 1962, Pub.L. 87-664, §6(a), 76 Stat. 551.

Title 26, United States Code, Section 1(c):

Unmarried individuals (other than surviving spouses and heads of households).

There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b) who is not a married individual (as defined in section 143) a tax determined in accordance with the following table:

If the taxable income is Not over $500 - - - - - - - - - The tax is: 14% of the taxable income . . .

Title 26, United States Code, Section 151(a):

Allowance of deductions.

In the case of an individual, the exemptions provided by this section shall be allowed as deductions in computing taxable income.

Title 26, United States Code, Section 162(a);

Trade or business expenses. In general.

There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—. . .

Title 26, United States Code, Section 165(a):

Losses. General rule.

There shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

Title 26, United States Code, Section 167(a):

Depreciation. General rule.

There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) of property used in a trade or business, or
(2) of property held for the production of income.

Title 26, United States Code, Section 172(a):

Net operating loss deduction. Deduction allowed.

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.

Title 26, United States Code, Section 1374(a):

Corporation net operating loss allowed to shareholders. General Rule.

A net operating loss of an electing small business corporation for any taxable year shall be allowed as a deduction from

gross income of the shareholders of such corporation in the manner and to the extent set forth in this section.

Title 26, United States Code, Section 7212(a):

Attempts to interfere with administration of internal revenue laws. Corrupt or forcible interference.

Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, upon conviction thereof, be fined not more than $5,000, or imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person convicted thereof shall be fined not more than $3,000, or imprisoned not more than 1 year, or both. The term "threats of force", as used in this subsection, means threats of bodily harm to the officer or employee of the United States or to a member of his family.

Title 28, United States Code, Section 1343:

Civil rights and elective franchise.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in sec-

tion 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote. June 25, 1948, c. 646, 62 Stat. 932; Sept. 3, 1954, c. 1263, Sec. 42, 68 Stat. 1241; Sept. 9, 1957, Pub.L. 85-315, Part III, Sec. 121, 71 Stat. 637.

Title 28, United States Code, Section 1443:

Civil rights cases.

Any of the following civil actions or criminal prosecutions commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the grounds that it would be inconsistent with such law. (June 25, 1948, ch. 645, Section 1, 62 Stat. 938).

Title 28, United States Code, Section 1447(d):

Procedure after removal generally.

An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except

that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise. June 25, 1948, c. 646, Sec. 1, 62 Stat. 939; May 24, 1949, c. 139, Sec. 84, 63 Stat. 102; July 2, 1964, P.L. 88-352, Title IX, Sec. 901, 78 Stat. 266.

Title 28, United States Code, Section 1651(a):

Writs.

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. June 25, 1948, c. 646, 62 Stat. 944; May 24, 1949, c. 139, Sec. 90, 63 Stat. 102.

Title 42, United States Code, Section 1981:

Equal rights under the law.

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like purnishment, [sic] pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R.S. 1977.

Title 42, United States Code, Section 1982:

Property rights of citizens.

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. (R.S. Sec. 1978).

Title 42, United States Code, Section 1983:

Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (R.S. Sec. 1979).

Title 42, United States Code, Section 1985:

Conspiracy to interfere with civil rights.

(1) Preventing officer from performing duties.

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror.

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such juror in his person or property on account of his having so attended or testified, or to influence

the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such party or witness in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges.

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege, of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against one or more of the conspirators. R.S. Sec. 1980.

Regulations Involved:

Fed. Rules Cr. Proc., Rule 15(a), 18 U.S.C.

Depositions. When Taken.

Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties order that trestimony [sic] of such witness taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.

Fed. Rules Cr. Proc., Rule 16(a)(1)(A), 18 U.S.C.

Disclosure of Evidence by the Government. Information Subject to Disclosure. Statement of Defendant.

Upon request of a defendant the government shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government; the substance of any oral statement which the government intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent; and recorded testimony of the defendant before a grand jury which relates to the offense charged. Where the defendant is a corporation, partnership, association or labor union, the court may grant the defendant, upon its motion, discovery

of relevant recorded testimony of any witness before a grand jury who (1) was, at the time of his testimony, so situated as an officer or employee as to have been able legally to bind the defendant in respect to conduct constituting the offense, or (2) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the defendant in respect to that alleged conduct in which he was involved.

Fed. Rules Cr. Proc., Rule 21(a), 18 U.S.C.

Transfer from the District for Trial. For Prejudice in the District.

The court upon motion of the defendant shall transfer the proceeding as to him to another district whether or not such district is specified in the defendant's motion if the court is satisfied that there exists in the district where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial at any place fixed by law for holding court in that district. As amended Feb. 28, 1966, eff. July 1, 1966.

Fed. Rules Civ. Proc., Rule 60(b), 28 U.S.C.

Relief from Judgment or Order. Mistakes; Inadvertance; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertance, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrisic [sic] or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satis-

fied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or other proceeding was entered or taken. A motion under this subdivision (b) does not have the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C. §1655, or to set aside a judgment for fraud upon the court. Writs of coram nomis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. As amended Dec. 27, 1946, effective March 19, 1948; Dec. 29, 1948, effective Oct. 20, 1949.